

UNITED STATES DISTRICT COURT

DISTRICT OF NEVADA

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DANIEL W. KELLER,

v.

WASHOE COUNTY, *et al.*,

Plaintiff,

Defendants.

Case No. 3:25-cv-00104-MMD-CSD

ORDER

Plaintiff Daniel W. Keller brings this civil rights action under 42 U.S.C. § 1983 to redress constitutional violations that he claims he suffered while incarcerated at Washoe County Detention Center. (ECF No. 1-1.) On March 7, 2025, the Court ordered Keller to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee on or before May 6, 2025. (ECF No. 3.) The Court warned Keller that his case could be dismissed if he failed to file a fully complete application to proceed *in forma pauperis* or pay the full \$405 filing fee for a civil action by that deadline. (*Id.* at 2.) That deadline expired, and Keller failed to file a fully complete application to proceed *in forma pauperis*, pay the \$405 filing fee, or otherwise respond.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action based on a party’s failure to obey a court order or comply with local rules. See *Carey v. King*, 856 F.2d 1439, 1440-41 (9th Cir. 1988) (affirming dismissal for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming dismissal for failure to comply with court order). In determining whether to dismiss an action on one of these grounds, the Court must consider: (1) the

1 public's interest in expeditious resolution of litigation; (2) the Court's need to manage its
2 docket; (3) the risk of prejudice to defendants; (4) the public policy favoring disposition of
3 cases on their merits; and (5) the availability of less drastic alternatives. See *In re
4 Phenylpropanolamine Prod. Liab. Litig.*, 460 F.3d 1217, 1226 (9th Cir. 2006) (quoting
5 *Malone*, 833 F.2d at 130).

6 The first two factors, the public's interest in expeditiously resolving this litigation
7 and the Court's interest in managing its docket, weigh in favor of dismissal of Keller's
8 claims. The third factor, risk of prejudice to defendants, also weighs in favor of dismissal
9 because a presumption of injury arises from the occurrence of unreasonable delay in filing
10 a pleading ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542
11 F.2d 522, 524 (9th Cir. 1976). The fourth factor—the public policy favoring disposition of
12 cases on their merits—is outweighed by the factors favoring dismissal.

13 The fifth factor requires the Court to consider whether less drastic alternatives can
14 be used to correct the party's failure that brought about the Court's need to consider
15 dismissal. See *Yourish v. Cal. Amplifier*, 191 F.3d 983, 992 (9th Cir. 1999) (explaining
16 that considering less drastic alternatives *before* the party has disobeyed a court order
17 does not satisfy this factor); *accord Pagtalunan v. Galaza*, 291 F.3d 639, 643 & n.4 (9th
18 Cir. 2002) (explaining that “the persuasive force of” earlier Ninth Circuit cases that
19 “implicitly accepted pursuit of less drastic alternatives prior to disobedience of the court’s
20 order as satisfying this element[,]” i.e., like the “initial granting of leave to amend coupled
21 with the warning of dismissal for failure to comply[,]” have been “eroded” by *Yourish*).
22 Courts “need not exhaust every sanction short of dismissal before finally dismissing a
23 case, but must explore possible and meaningful alternatives.” *Henderson v. Duncan*, 779
24 F.2d 1421, 1424 (9th Cir. 1986). Because this action cannot proceed until and unless
25 Keller files a complete application to proceed *in forma pauperis* or pays the \$405 filing fee
26 for a civil action, the only available alternative is to enter another order setting a new
27 deadline, notwithstanding the strain on judicial resources. Here, circumstances do not
28 indicate that this case qualifies as an exception: there is no hint that Keller requires

1 additional time nor is there evidence that he failed to receive the Court's order. Thus,
2 because setting another deadline is not a meaningful alternative, the fifth factor favors
3 dismissal.

4 The Court accordingly finds that the above factors weigh in favor of dismissal. It is
5 therefore ordered that this action is dismissed without prejudice based on Keller's failure
6 to file a complete application to proceed *in forma pauperis* or to pay the \$405 filing fee in
7 compliance with this Court's March 7, 2025 order.

8 The Clerk of Court is directed to enter judgment accordingly and to close this case.
9 No other documents may be filed in this now-closed case. If Keller wishes to pursue his
10 claims, he must file a complaint in a new case.

11 DATED THIS 14th Day of May 2025.

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15 MIRANDA M. DU
16 UNITED STATES DISTRICT JUDGE
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